Supreme Court, U.S.
FILED
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CLERK

No. 96-271

In The

Supreme Court of the United States

October Term, 1995

CLARA REDDING, individually and as legal guardian of PATRICK LOUIS BELL, a minor,

Petitioners,

v.

INDEPENDENT SCHOOL DISTRICT NO. 33 OF CREEK COUNTY, OKLAHOMA, a/k/a BOARD OF EDUCATION, SAPULPA SCHOOL DISTRICT, STATE OF OKLAHOMA, a/k/a SAPULPA MIDDLE SCHOOL; TIMOTHY LYNN HOPPE, an individual; DR. CHARLES B. DODSON; SUZANNE WILLIAMS; and JANE and JOHN DOES 1-25,

Respondents.

On Petition For Writ Of Certiorari To The Oklahoma Supreme Court

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

Page

RESPONSE TO PETITION FOR WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTIONAL STATEMENT 2

STATEMENT OF THE CASE 2

A. Procedural History in the State Courts of Oklahoma 2

B. Misstatements by Petitioner 6

REASONS FOR DENYING THE WRIT 9

I. This Court Lacks Jurisdiction to Consider Petitioner's Arguments 9

II. The Oklahoma Court of Appeals Properly Applied Oklahoma Law 13

CONCLUSION 16

RESPONDENTS' APPENDIX A A1

RESPONDENTS' APPENDIX B B1

TABLE OF AUTHORITIES

Page(s)

CASES

Bailey v. Anderson, 326 U.S. 203 (1945) 11

Beck v. Washington, 369 U.S. 541 (1962) 11, 15

Cardinale v. Louisiana, 394 U.S. 437 (1969) 11, 12

Exxon Corp. v. Eagerton, 462 U.S. 176 (1983) 10, 15

Fuller v. Oregon, 417 U.S. 40 (1974) 10

Great Plains Federal Savings & Loan Ass'n v. Dabney, 846 P.2d 1088 (Okla. 1993) 15

Illinois v. Gates, 462 U.S. 213 (1983) 11, 12

Indiana Nat'l Bank v. State Dept. of Human Services, 857 P.2d 53 (Okla. 1993) 5, 14

Jones v. Alpine Investments, Inc., 764 P.2d 513 (Okla. 1987) 14

McGoldrick v. Compagnie Generale Transatlantique, 309 U.S. 430 (1940) 12

Northrip v. Montgomery Ward & Co., 529 P.2d 489 (Okla. 1974) 14

Street v. New York, 394 U.S. 576 (1969) 10

Yee v. City of Escondido, 503 U.S. 519 (1992) ..11, 12, 13

STATUTES

28 U.S.C. § 1257 ..... 2, 11, 12, 15

OKLA. STAT. tit. 12, Ch. 15, App. 2.....8, 13

TABLE OF AUTHORITIES – Continued

Page(s)

OKLA. STAT. tit. 20, § 30.1 5

OKLA. STAT. tit. 51, §§ 151-171 2

OKLA. STAT. tit. 51, § 152(8) 3

OKLA. STAT. tit. 51, § 156 3

OKLA. STAT. tit. 51, § 156(C) 4

OKLA. STAT. tit. 51, § 156(D) 4

OKLA. STAT. tit. 51, § 157 3

OTHER AUTHORITIES

Rule 10(c) of the Rules of the Supreme Court of the United States 9

Rule 15 of the Rules of the Supreme Court of the United States 6

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Respondents, Independent School District No. 33 of Creek County, Oklahoma (the "Sapulpa School District"), Dr. Charles B. Dodson, and Suzanne Williams,[1] respectfully pray that this Honorable Court deny the Petitioner's request for a writ of certiorari. Petitioner seeks review of an unpublished opinion of the Oklahoma Court of Appeals, Oklahoma's intermediate appellate court, which neither considered nor purported to decide any question of federal law. The only issue properly before the Oklahoma Court of Appeals involved purely a question of Oklahoma law, that being whether Petitioner had substantially complied with the Oklahoma Governmental Tort Claims Act's requirement that a notice of a tort claim be delivered to a political subdivision prior to filing suit against such political subdivision. Because Petitioner made no attempt to raise a question of federal law until after the Oklahoma Court of Appeals had rendered its decision, this Court lacks jurisdiction to review this case. Respondents respectfully ask that Petitioner's request for a writ of certiorari be denied.

OPINIONS BELOW

See Petitioner's Appendix setting forth the "not for publication" opinion of the Oklahoma Court of Appeals,

[1] The remaining defendants named in the caption, Timothy Lynn Hoppe and Jane and John Does 1-25, were never served and are not parties to this action.

Division 2, in *Clara Redding v. Independent School District No. 33 of Creek County, Oklahoma,* Case No. 86,561.

JURISDICTIONAL STATEMENT

This Court cannot properly exercise jurisdiction over this case under 28 U.S.C. § 1257. No federal question was presented to or decided by the Oklahoma Court of Appeals. This case was decided below solely on a question of Oklahoma law.

STATEMENT OF THE CASE

A. Procedural History in the State Courts of Oklahoma

Petitioner initiated this action individually and as legal guardian of Patrick Louis Bell, a minor ("Bell"), in the district court of Creek County, Oklahoma. Petitioner alleged that Bell, a special education student, had been sexually molested by defendant Timothy Lynn Hoppe while Hoppe was employed as a teacher's aide at the Sapulpa School District. Petitioner alleged that Respondents were negligent in employing Hoppe when they knew or should have known that Hoppe had a propensity or tendency to assault students. Petitioner further alleged that she had complied with the notice provisions of the Oklahoma Governmental Tort Claims Act, OKLA. STAT. tit. 51, §§ 151-171. Petitioner did *not* allege that the Oklahoma Governmental Tort Claims Act violated the due process clause of the fourteenth amendment or was in

any way violative of the Constitution of the United States. *See* Amended Petition for Negligence Prior to Responsive Pleadings, attached at Respondents' Appendix A.

The Oklahoma Governmental Tort Claims Act requires that any person with a tort claim against the state or a political subdivision[2] provide written notice of such claim to the state or political subdivision before filing suit. OKLA. STAT. tit. 51, § 156. Pursuant to Section 157, the state or political subdivision has ninety (90) days within which to allow the claim. A plaintiff may not bring an action in tort until the state or political subdivision has been notified of the claim and the claim has been denied in whole or in part. If the state or political subdivision has not allowed the claim within ninety (90) days, the claim is deemed denied and the claimant may then file suit. The Oklahoma Governmental Tort Claims Act requires that the notice of a tort claim be provided to the state or political subdivision within one (1) year of the event giving rise to the claim and that suit be brought within 180 days of the state or political subdivision's denial of the claim.

The Respondents filed a motion to dismiss or, in the alternative, for summary judgment on the ground that Petitioner had failed to comply with the notice provisions of the Oklahoma Governmental Tort Claims Act. The Respondents attached the Affidavit of Respondent Dr. Charles Dodson, Superintendent of the Sapulpa School

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[2] The Oklahoma Governmental Tort Claims Act specifically defines "political subdivision" to include "school districts." OKLA. STAT. tit. 51, § 152(8).

District, which recited that no notice of a tort claim on behalf of Petitioner or Bell had ever been received by any representative of the Sapulpa School District. *See* the opinion of the Oklahoma Court of Appeals set forth in Petitioner's Appendix.

Petitioner filed a response brief in which she acknowledged that written notice of her tort claim had been mailed to the Office of the Risk Management Administrator for the State of Oklahoma pursuant to OKLA. STAT. tit. 51, § 156(C), rather than to the clerk of the Board of Education of the Sapulpa School District as required by OKLA. STAT. tit. 51, § 156(D). Petitioner argued, however, that notice to the State of Oklahoma, combined with correspondence from her former attorney to the Sapulpa School District and the Sapulpa School District's attorneys, "substantially complied" with the notice provisions of the Oklahoma Governmental Tort Claims Act. Petitioner cited various decisions from the Oklahoma Supreme Court holding that substantial compliance with the notice provisions of the Oklahoma Governmental Tort Claims Act is sufficient where the purposes underlying the notice requirement are satisfied.

The district court of Creek County granted summary judgment to the Respondents, finding that Petitioner had *not* substantially complied with the notice requirements of the Governmental Tort Claims Act. Petitioner appealed to the Oklahoma Supreme Court.[3] In her Petition in Error

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[3] Under Oklahoma law, all appeals are initially filed with the Oklahoma Supreme Court, which either retains jurisdiction of the appeal or assigns it to the Oklahoma Court of Appeals for decision. A party may petition the Oklahoma Supreme Court for

to that court, Petitioner purported to raise two issues: whether she had complied or substantially complied with the notice provisions of the Oklahoma Governmental Tort Claims Act under the applicable decisions of the Oklahoma Supreme Court, and "whether the statute of limitations set out in Oklahoma's Governmental Tort Claims Act apply (sic) to mentally retarded minors." *See* Exhibit "C" to Petitioner's Amended Petition in Error, attached at Respondents' Appendix B. This was the first time Petitioner raised any question about the applicability of the Oklahoma Governmental Tort Claims Act to Petitioner's case (*see* the opinion of the Oklahoma Court of Appeals in Petitioner's Appendix), and even this untimely-raised issue did *not* challenge the constitutionality of the Oklahoma Governmental Tort Claims Act.

The Oklahoma Supreme Court assigned the case to the Oklahoma Court of Appeals for decision, and the Oklahoma Court of Appeals affirmed the summary judgment in favor of Respondents. The Oklahoma Court of Appeals specifically declined to rule on the applicability of the Oklahoma Governmental Tort Claims Act to "mentally retarded minors," noting:

> With regard to the latter issue, we note that it was not raised in the trial court. We will not consider an issue raised for the first time on appeal from grant of summary judgment. *Indiana Nat'l Bank v. State Dept. of Human Services*, 857 P.2d 53 (Okla. 1993).

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a writ of certiorari to review a decision by the Oklahoma Court of Appeals, but such review is purely discretionary. OKLA. STAT. tit. 20, § 30.1.

Petitioner then sought a writ of certiorari from the Oklahoma Supreme Court, which declined to review the decision of the Oklahoma Court of Appeals. Petitioner thereupon petitioned this Court for a writ of certiorari to the Oklahoma Supreme Court.

B. Misstatements by Petitioner

The factual background of this case is accurately set forth in the opinion of the Oklahoma Court of Appeals contained in Petitioner's Appendix. As that opinion makes clear, the only question considered and passed upon by the Oklahoma courts was whether, under Oklahoma law, Petitioner substantially complied with the notice requirements of the Oklahoma Governmental Tort Claims Act. That issue in no way involves an important question of federal law.

Pursuant to Rule 15 of the Rules of the Supreme Court of the United States, Respondents bring the following misstatements of fact contained in the Petition for Certiorari to the Court's attention.

The first issue identified on page i. of the Petition falsely states that the Sapulpa School District "actually knew that a claim against them was to be filed and had already hired a law firm to defend the potential claim." As the Oklahoma Court of Appeals correctly pointed out, Oklahoma law requires that a party at least provide the state or political subdivision with actual notice of a claim for monetary relief before an Oklahoma court will conclude that such party has substantially complied with the notice provisions of the Oklahoma Governmental Tort Claims Act. The Oklahoma Court of Appeals reviewed

the evidence and found that none of the correspondence on which Petitioner relied contained any claim for damages. Instead, the Oklahoma Court of Appeals noted that the correspondence between Petitioner's former attorney and the Sapulpa School District and the Sapulpa School District's attorney concerned Petitioner's desire to obtain a transfer that would allow Bell to attend school in a different school district. Accordingly, the correspondence cited by Petitioner related only to the transfer issue and the issue of the Sapulpa School District's ability to meet Bell's educational needs, not to a tort claim for money damages. Opinion of the Oklahoma Court of Appeals in Petitioner's Appendix.

In addition, there is absolutely no evidence anywhere in the record to suggest that the Sapulpa School District hired a law firm "to defend the potential claim." In truth and fact, Respondents' attorneys have a long-term relationship with the Sapulpa School District that predates the facts giving rise to this lawsuit by many years. Petitioner's assertion that Respondents "hired" a law firm to defend against her potential claim is an egregious misrepresentation of fact.

Petitioner states in the third paragraph under "Jurisdiction" on page vii. that her contentions under the fifth amendment and the fourteenth amendment "were first brought up in arguments during the hearing [on Respondents' motion for summary judgment] by the Appellee (sic), as well as in Appellee's (sic) first Appeal Brief to the Oklahoma Court of Appeals. . . . " To suggest that any constitutional claim was presented to the district court of Creek County is flatly untrue. No such claim was raised in Petitioner's initial petition (*see* Respondents' Appendix

A) or in any brief filed with that court. The sole issue before the district court of Creek County was whether Petitioner had complied or substantially complied with the notice requirements of the Oklahoma Governmental Tort Claims Act.

In addition, neither Petitioner nor Respondents filed an "Appeal Brief to the Oklahoma Court of Appeals." Oklahoma law specifically provides that on appeals from summary judgments, the appellate court "shall confine its review to the record 'actually presented' to the trial court." Rule 1.203(A)(3), Rules of Appellate Procedure in Civil Cases, OKLA. STAT. tit. 12, Ch. 15, App. 2. In addition, Rule 1.203(A)(3) specifically provides: "Unless otherwise ordered by the appellate court, no briefs will be allowed on review." Appellate briefs were *not* ordered by the Oklahoma Court of Appeals in this case, and no appeal briefs were filed.

The Petitioner did file a Petition in Error with the Oklahoma Supreme Court to initiate her appeal, but that document contained no reference to any claim under the fifth or fourteenth amendments. *See* Respondents' Appendix B. Petitioner did not attempt to raise a claim under the United States Constitution until she filed a Petition for Certiorari in the Oklahoma Supreme Court in the attempt to persuade that court to review the decision of the Oklahoma Court of Appeals. As previously noted, the Oklahoma Supreme Court declined to grant certiorari.

Page 2 of the text of Petitioner's petition recites that a February 8, 1994, letter from Petitioner's first attorney to Respondent Dr. Charles Dodson contains a reference to a meeting among Petitioner, her previous attorney, and Dr.

Dodson "which included a discussion concerning a potential lawsuit." A copy of this letter is reproduced in Petitioner's petition, and it does not indicate that a potential lawsuit was discussed. To the contrary, taken in context, the comment clearly expresses a subjective opinion arising from the frustration of Petitioner's former attorney at the Sapulpa School District's refusal to allow Bell to transfer to another school district:

> I would appreciate a meeting being set in the immediate future so that Louis Bell can be taken care of. It is my impression from your actions that you don't care whether Louis returns to school or not. The only concern you and the school seem to be concerned about is whether a lawsuit is going to be filed against the school.

This letter in no way establishes that the parties ever discussed a potential lawsuit by Petitioner against Respondents or that Petitioner ever made any claim for monetary damages against the Sapulpa School District.

REASONS FOR DENYING THE WRIT

I.

This Court Lacks Jurisdiction to Consider Petitioner's Arguments.

Petitioner contends that this Court has jurisdiction of this matter under Rule 10(c) of the Rules of the Supreme Court of the United States. Yet as the record of this case shows, the Oklahoma Court of Appeals neither decided nor purported to decide "an important question of federal law." Petitioner's Amended Petition for Negligence

Prior to Responsive Pleadings, attached at Respondents' Appendix A, and her Amended Petition in Error to the Oklahoma Supreme Court, attached at Respondents' Appendix B, establish that Petitioner did not seek to challenge the constitutionality of the Oklahoma Governmental Tort Claims Act or to raise any question of federal law until after the Oklahoma Court of Appeals had rendered its decision.

This Court has announced on many occasions that it will not review a state court's decision on a federal issue not addressed by the state court. As Justice Marshall noted for the unanimous Court in *Exxon Corp. v. Eagerton*, 462 U.S. 176, 181 n.3 (1983):

> Although appellants . . . also contend that the application of the pass-through prohibition to oil was preempted by the Emergency Petroleum Allocation Act of 1973 (EPAA) . . . and the regulations promulgated thereunder, we conclude that we have no jurisdiction to consider this contention. The decision below does not discuss this issue, and when " 'the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary.' " *Fuller v. Oregon*, 417 U.S. 40, 50, n.11 (1974), *quoting Street v. New York*, 394 U.S. 576, 582 (1969). No such showing has been made here. Although appellants . . . have represented to this Court that the trial court held the pass-through prohibition to be preempted by the EPAA . . . an examination of the trial court opinion reveals that in fact the court made no mention of the EPAA. Nor does

> anything in the record before us indicate that this issue was raised in the trial court. Appellants did address the EPAA in their brief before the Supreme Court of Alabama . . . but that court did not pass upon the issue. Under these circumstances, we have no jurisdiction to consider whether the EPAA preempted the application of the pass-through prohibition to oil, for it does not affirmatively appear that that issue was decided below. *Bailey v. Anderson*, 326 U.S. 203, 206-207 (1945).

The same rule was followed in *Yee v. City of Escondido*, 503 U.S. 519, 532-533 (1992) (Court declined to address substantive due process claim under 28 U.S.C. § 1257 where claim was not raised or addressed in state court), and in *Beck v. Washington*, 369 U.S. 541, 549-553 (1962) (equal protection challenge to state statute not before the Court because it was not properly presented in the state court).

In *Illinois v. Gates*, 462 U.S. 213 (1983), the Court considered without deciding whether the rule against considering matters "not pressed or passed upon below" is jurisdictional or prudential. In declining to consider whether the exclusionary rule should be modified where that issue had not been presented to or decided by the state court, the Court examined its precedents and identified several purposes for the rule against considering issues "not pressed or passed upon below":

> "Questions not raised below are those on which the record is very likely to be inadequate since it certainly was not compiled with those questions in mind." *Cardinale v. Louisiana*, 394 U.S. 437, 439 (1969). . . .

> Likewise, "due regard for the appropriate relationship of this Court to state courts," *McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. [430], at 434-435 [(1940)], demands that those courts be given an opportunity to consider the constitutionality of the actions of state officials, and, equally important, proposed changes in existing remedies for unconstitutional actions. Finally, by requiring that [the issue first be presented to the state courts], we permit a state court, even if it agrees with the [proponent] as a matter of federal law, to rest its decision on an adequate and independent state ground. *See Cardinale, supra*, at 439. *Illinois v. Gates*, 402 U.S. at 221-222.

All of the reasons identified by the Court in *Illinois v. Gates* are equally applicable to this case.

The procedural background against which Petitioner seeks to raise a constitutional issue in this case is very similar to that of *Yee v. City of Escondido*, 503 U.S. 519. Like Petitioner, the Yees "did not include a due process claim in their complaint," nor did they raise a due process issue before the California Court of Appeal. *Id.* at 533. "It was not until their petition for review in the California Supreme Court that petitioners finally raised a substantive due process claim." *Id.* The California Supreme Court denied discretionary review, which, under California law, "expresses no view as to the merits." *Id.* "In short, petitioners did not raise a substantive due process claim in the state courts, and no state court has addressed such a claim." *Id.* Because no substantive due process claim was presented to or addressed by the California courts, this Court declined to consider such a claim under 28 U.S.C. § 1257.

Petitioner likewise failed to raise a constitutional claim of any kind in her amended petition filed in the district court of Creek County, Oklahoma, or in her Petition in Error initiating an appeal to the Oklahoma Supreme Court. After the Oklahoma Supreme Court assigned the appeal to the Oklahoma Court of Appeals, that court issued a "not for publication" decision. Under Oklahoma's rules of appellate procedure, opinions marked "not for publication" "shall not be considered as precedent by any court or in any brief or other material presented to any court, except to support a claim of res judicata, collateral estoppel, or law of the case." Rule 1.200(B), Rules of Appellate Procedure in Civil Cases, OKLA. STAT. tit. 12, Ch. 15, App. 2. Thus, the unpublished decision Petitioner asks this Court to review has no precedential value and may not even properly be cited as a controlling interpretation of Oklahoma law. Clearly, Petitioner's claim is no more properly before this Court than was the substantive due process claim sought to be asserted in *Yee v. City of Escondido*. Petitioner's request for a writ of certiorari should be denied.

II.

The Oklahoma Court of Appeals Properly Applied Oklahoma Law.

The Amended Petition for Negligence Prior to Responsive Pleadings filed by Petitioner in the district court of Creek County contained no claim that the Oklahoma Governmental Tort Claims Act should not be applied to "mentally retarded minors." Indeed, that amended petition recited that proper notice of Petitioner's tort claim had been given to the Sapulpa School

District pursuant to the Oklahoma Governmental Tort Claims Act and that sufficient time had passed to constitute denial of such claim. *See* Respondents' Appendix A.

After the trial court had granted summary judgment to Respondents, Petitioner sought to challenge the applicability of the Oklahoma Governmental Tort Claims Act to her claim. The Oklahoma Court of Appeals declined to consider a question raised for the first time on appeal from a summary judgment, however, citing *Indiana Nat'l Bank v. State Dept. of Human Services*, 857 P.2d 53 (Okla. 1993). Opinion of Oklahoma Court of Appeals in Petitioner's Appendix.

Indiana Nat'l Bank properly recites the rule followed by the Oklahoma Supreme Court:

> Parties may not present new issues on appeal which seek reversal of a trial court grant of summary judgment which were not presented to the trial court. *Id.* at 57, n.1.

To the same effect is *Northrip v. Montgomery Ward & Co.*, 529 P.2d 489, 494 (Okla. 1974) (appeal from order granting summary judgment limited to issues "raised by the pleadings" in keeping with rule that appellate review is "confined to issues presented by the record"), and *Jones v. Alpine Investments, Inc.*, 764 P.2d 513, 515 (Okla. 1987) ("Parties on appeal are limited to the issues presented at the trial level").

Petitioner contends that she "brought up" such issue in arguments before the district court of Creek County. Petition for Certiorari, p. vii. There is no transcript of this hearing, and counsel for Respondents adamantly denies

that such issue was raised or argued. But even if Petitioner had broached such issue at that time (which she did not), that is not sufficient under Oklahoma law to raise an issue for appellate review. In *Great Plains Federal Savings & Loan Ass'n v. Dabney*, 846 P.2d 1088 (Okla. 1993), the Oklahoma Supreme Court explained that although an issue may have been mentioned in oral argument before the trial court, such issue was not properly before the trial court where it was neither raised in the pleadings nor addressed in the parties' briefs. *Id.* at pp. 1089-1090, n.2.

In appeals under 28 U.S.C. § 1257, this Court looks to the law of the state to determine whether an issue was properly raised in the state courts. *Exxon Corp. v. Eagerton*, 462 U.S. 176, 181 n.3 (1983) ("The general practice of the Alabama appellate courts is not to consider issues raised for the first time on appeal"); *Beck v. Washington*, 369 U.S. 541, 549-553 (1962) ("The Washington Supreme Court has unfailingly refused to consider constitutional attacks upon statutes not made in the trial court").

Under the law of Oklahoma, Petitioner did not properly raise any issue as to the applicability of the Oklahoma Governmental Tort Claims Act to her claim. She neither pleaded in her amended petition that the Oklahoma Governmental Tort Claims should not apply to a claim brought on behalf of a "mentally retarded minor" nor pressed such a contention in her brief in response to Respondents' motion for summary judgment. This Court should therefore decline to grant certiorari to consider a claim never properly raised in the state courts of Oklahoma.

CONCLUSION

For the reasons stated herein, Respondents pray that Petitioner's Petition for Writ of Certiorari to the Oklahoma Supreme Court be denied.

Respectfully submitted,

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RESPONDENTS' APPENDIX A

IN AND FOR THE DISTRICT COURT OF
CREEK COUNTY
STATE OF OKLAHOMA

CLARA REDDING, individually and as legal guardian of PATRICK LOUIS BELL, a minor, Plaintiff, vs. INDEPENDENT SCHOOL DISTRICT NO. 33 OF CREEK COUNTY, OKLAHOMA, a/k/a BOARD OF EDUCATION, SAPULPA SCHOOL DISTRICT, STATE OF OKLAHOMA, a/k/a SAPULPA MIDDLE SCHOOL; TIMOTHY LYNN HOPPE, an individual; DR. CHARLES B. DODSON; SUZANNE WILLIAMS; and JANE and JOHN DOES 1-25 Defendants.	Case No. CJ 94-569 ATTORNEY'S LIEN CLAIMED BY: /s/ Thomas S. Evans Thomas S. Evans

AMENDED PETITION FOR NEGLIGENCE PRIOR TO RESPONSIVE PLEADINGS

(Filed March 15, 1995)

COMES NOW the Plaintiff, Clara Redding, individually and as legal guardian of Patrick Louis Bell, a minor, and in amending her Petition for Negligence Prior to Responsive Pleadings, would allege and state as follows:

1. That at all foregoing times and dates relative to this cause of action, the Parties are properly named and

that the jurisdiction and venue of this Court is good and proper.

2. That prior to November 8, 1993, minor Patrick Louis Bell, a special education student, was subjected to numerous acts of sexual molestation, sexual improprieties, etc., at the direction of Defendant teacher aide Timothy Lynn Hoppe. Teacher aide Timothy Lynn Hoppe was an employee of the Sapulpa School District, more particularly the Independent School District No. 33 of Creek County, Oklahoma, a/k/a Sapulpa Middle School.

3. On the aforementioned date, November 8, 1993, Defendant Timothy Lynn Hoppe sexually assaulted and battered the minor Plaintiff, Patrick Louis Bell, causing him personal and emotional injuries as set forth below.

4. Defendants Independent School District No. 33 of Creek County, Oklahoma, a/k/a Board of Education, Sapulpa School District, a/k/a Sapulpa Middle School, Dr. Charles B. Dodson, and Suzanne Williams, and Jane and John Does 1 - 25 caused or contributed to the aforementioned injuries, in one or more of the following respects:

(a) The aforementioned Defendants, Independent School District No. 33 of Creek County, Oklahoma, a/k/a Board of Education, Sapulpa School District, a/k/a Sapulpa Middle School, Dr. Charles B. Dodson, and Suzanne Williams, employed the individual Defendant, Timothy Lynn Hoppe, in a teacher's assistant capacity at a time when they knew or should have shown that Defendant Hoppe had a propensity or tendency to sexually assault students;

(b) Defendants Independent School District No. 33 of Creek County, Oklahoma, a/k/a Board of Education, Sapulpa School District, a/k/a Sapulpa Middle School, Dr. Charles B. Dodson, and Suzanne Williams, failed to investigate and discover the previous record of Mr. Hoppe for sexual assault and battery at a time when Defendants knew or should have known that Mr. Hoppe would be placed in a position of authority over students, including mentally challenged student [sic], such as the minor Plaintiff, Patrick Louis Bell.

5. As a result of Defendants' acts as set forth above, the minor Plaintiff, Patrick Louis Bell, suffered personal injuries; has and will suffer pain of mind and body; has and will suffer psychological injury; and has and will be disabled.

6. As a further result of Defendants' acts, errors and/or omissions as set forth above, Plaintiff Clara Redding has incurred and will continue to incur medical expenses for the care and treatment of the minor Plaintiff Patrick Louis Bell.

7. That proper notice of a claim was provided to the Defendants under the Oklahoma Governmental Tort Claims Act, Title 51, Sections 151, et seq., and that sufficient time has passed to constitute a denial of the Defendants of said Notice of Claim.

8. Acts of the individual Defendant, Timothy Lynn Hoppe, as set forth above, were intentional and malicious, such that punitive damages should be imposed.

8 [sic]. Acts of Defendants Independent School District No. 33 of Creek County, Oklahoma, a/k/a Board of Education, Sapulpa School District, a/k/a Sapulpa Middle School, Dr. Charles B. Dodson, and Suzanne Williams as set forth above were wilful, malicious and grossly negligent, such that punitive damages should be imposed.

WHEREFORE, Plaintiffs request damages in excess of $10,000.00, plus punitive damages together with interest and costs of this action, plus what other further relief this Court deems equitable and just.

/s/ Thomas S. Evans
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Attorney for the Plaintiff
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RESPONDENTS' APPENDIX B

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

CLARA REDDING, individually and as legal guardian of PATRICK LOUIS BELL, a minor, Plaintiff, vs. INDPENDENT SCHOOL DISTRICT NO. 33 OF CREEK COUNTY, OKLAHOMA, a/k/a BOARD OF EDUCATION, SAPULPA SCHOOL DISTRICT, STATE OF OKLAHOMA, a/k/a SAPULPA MIDDLE SCHOOL; TIMOTHY LYNN HOPPE, an individual; DR. CHARLES B. DODSON; SUZANNE WILLIAMS; and JANE and JOHN DOES 1-25 Defendants.	Creek County Case No. CJ 94-569 Supreme Court Case No. 86,561

AMENDED PETITION IN ERROR (AND PRELIMINARY STATEMENT)

(Filed Dec. 19, 1995)

___ Petition in Error ___ Cross-Petition

X Amended Petition ___ Counter-Petition

If the petition is an amended petition, state purpose of amendment: As directed by this Court, a certified copy of final Journal Entry of Judgment is attached as Exhibit "A".

If the petition is a cross-petition or counter-petition, state the date that the original petition in error in the appeal was filed with the Clerk of this Court:

Type of Case in Supreme Court:

- X Judgment or Final Order of District Court (Rule 1.10)
- ___ Corp. Commission (Oil & Gas) (Rule 1.85)
- ___ Corp. Commission (Utility) (Rule 1.85)
- ___ Insurance Dept. (Rule 1.55)
- ___ Tax Commission (Rule 1.125)
- ___ Court of Tax Review (Rule 1.140)
- ___ Banking Board or Commissioner (Rule 1.155)
- ___ Other

A. TRIAL COURT HISTORY

COURT/TRIBUNAL:	District Court
COUNTY:	Creek
CASE NO.:	CJ-94-569
JUDGE:	Honorable Donald D. Thompson

ALL QUESTIONS MUST BE ANSWERED

DATE OF JUDGMENT OR ORDER APPEALED PRONOUNCED: October 23, 1995

DATE THE JUDGMENT OR ORDER WAS FILED: October 23, 1995

WAS APPELLANT OR APPELLANT'S ATTORNEY PRESENT WHEN THE JUDGMENT OR ORDER WAS PRONOUNCED? __ Yes X No.

WAS A PARTY OR CLERK DIRECTED TO MAIL A COPY OF THE JUDGMENT OR ORDER TO THE APPELLANT? X Yes __ No

IF MAILING A COPY OF THE JUDGMENT OR ORDER WAS DIRECTED DOES THE TRIAL COURT RECORD SHOW THAT THE JUDGMENT OR ORDER WAS MAILED TO THE APPELLANT WITHIN FIVE (5) DAYS OF THE DATE THE JUDGMENT OR ORDER WAS FILED? X Yes __ No. IF MAILING WAS ORDERED, ON WHAT DATE WAS THE ORDER MAILED TO THE APPELLANT?

BY DISTRICT COURT CLERK:

BY OTHER PARTIES

1. N/A _____

Dated Mailed. Name of party who mailed the order.

2. N/A _____

List all parties who mailed a copy of the order or judgment to the appellant and the dates mailed by each of those parties as reflected by the proof of service filed with the District Court Clerk.

POST-TRIAL MOTIONS

	Type of Authority	Date Filed in Trial Court
1.	N/A	_____

DATE OF DISPOSITION OF POST-TRIAL MOTION OR MOTIONS

	Type	Dated Disposed in Trial Court
1.	____	_____

B. DISPOSITION OF TRIAL COURT OR TRIBUNAL

NATURE OF JUDGMENT OR ORDER APPELLANT SEEKS TO REVERSE: Order granting Defendant/Appellee's Motion for Summary Judgment

RELIEF SOUGHT BY APPELLANT IN TRIAL COURT OR TRIBUNAL: Order granting Defendant/Appellee's Motion for Summary Judgment

RELIEF GRANTED BY THE TRIAL COURT OR TRIBUNAL: None

RELIEF SOUGHT BY APPELLEE IN TRIAL COURT OR TRIBUNAL: None

RELIEF GRANTED BY TRIAL COURT OR TRIBUNAL: None

JUDGMENT ON LESS THAN ALL CLAIMS OR PARTIES:

DID THE TRIAL COURT ADJUDICATE LESS THAN ALL OF THE CLAIMS OR PARTIES PRESENTED?

___ Yes X No. IF SO, DID THE TRIAL COURT MAKE AN EXPRESS DETERMINATION THAT LESS THAN ALL OF THE CLAIMS OR PARTIES PRESENTED SHOULD BE DECIDED AND EXPRESSLY DIRECT THE FILING OF A FINAL JUDGMENT? ___ Yes ___ No.

C. SUMMARY OF CASE

Exhibit "B" attached.

D. ISSUE AND ERRORS PROPOSED TO BE RAISED ON APPEAL

State with specificity each point of law urged as error.

See Exhibit "C" attached hereto.

ANY RELATED OR PRIOR APPEALS: ___ Yes X No.

If so, identify by style, citation if any, and Supreme Court Number.

CHECK THE APPLICABLE ISSUES INVOLVED IN THE APPEAL:

___ 01 Administrative Law and Procedure
___ 02 Appeal and Error
___ 03 Attorneys
___ 04 Bankruptcy
___ 05 Banks and Banking
___ 06 Bond Forfeitures
___ 07 U.C.C.
___ 08 Constitutional Law
___ 09 Contracts
___ 10 Corporation Commission
___ 11 Corporations & Partnerships
___ 12 Courts
___ 13 Damages

___ 14 Estates, Trusts, & Guardianships
___ 15 Family Law
___ 16 Insurance
___ 17 Labor Law
___ 18 Manufacturer's & Products Liability
___ 19 Oil & Gas Law
X 20 Procedure
___ 21 Property Law
___ 22 Schools & School Districts
___ 23 Taxation
X 24 Torts
___ 25 (No number 25)
___ 26 Water Law
___ 27 Government
___ 28 42 U.S.C. Section 1983
___ 29 Jurisdiction & Venue
___ 30 Elections/Initiative Petitions
___ 31 Prisoners
___ 32 Arbitration
___ 33 Securities
___ 34 Consumer Law
___ 35 Patents & Trademarks
___ 36 Indian Law
___ 37 Municipal Law
X 38 Governmental Tort Claims Act
___ 39 Garnishment & Execution
___ 40 Discovery
___ 41 Licenses
___ 42 Evidence
___ 43 Guaranty & Suretyships
___ 44 Liens, Mortgages & Notes
___ 45 Interest
X 46 Parties to a law suit

List by general topic as set forth above any other issues involved in this appeal: N/A

E. ALL APPELLANTS MUST SHOW HOW THE APPEAL IS TIMELY BROUGHT.

I. JUDGMENT AND FINAL ORDERS OF THE DISTRICT COURT

THE APPEAL FROM THE JUDGMENT OR FINAL ORDER HEREIN IS TIMELY BROUGHT BECAUSE:

1. THE PETITION IN ERROR WAS DELIVERED TO THE CLERK OF THE SUPREME COURT WITHIN THIRTY DAYS OF THE DATE THE JUDGMENT OR FINAL ORDER WAS:

X A. FILED WITH THE DISTRICT COURT CLERK, OR

__ B. MAILED TO THE APPELLANT BY THE DISTRICT COURT CLERK OR ANOTHER PARTY AND THE COURT RECORDS DO NOT REFLECT THE MAILING OF A COPY OF THE JUDGMENT WITHIN FIVE DAYS OF ITS FILING, OR

2. THE AMENDED PETITION IN ERROR WAS HAND DELIVERED TO THE CLERK OF THE SUPREME COURT, ON December 18, 1995 AND THE STATED DATE OF MAILING WAS WITHIN THIRTY DAYS OF:

X A. THE DATE THE JUDGMENT WAS FILED WITH THE DISTRICT COURT CLERK, OR

__ B. THE DATE THE JUDGMENT WAS MAILED TO THE APPELLANT BY THE DISTRICT COURT CLERK OR ANOTHEK PARTY AND THE COURT RECORDS DO NOT REFLECT THE MAILING OF A COPY OF THE JUDGMENT WITHIN FIVE DAYS OF ITS FILING, OR

3. _____

(If 1 or 2 does not apply, explain with citation to authority how appeal is timely).

F. **IS APPELLANT WILLING TO PARTICIPATE IN AN ATTEMPTED SETTLEMENT OF THE APPEAL BY PREDECISIONAL CONFERENCE UNDER COURT OF APPEALS RULE 3.7 IF OFFERED THE OPPORTUNITY? X Yes __ No.**

G. **IF [sic] APPELLANT AGREEABLE TO ACCELERATE PROCEDURES FOR THIS APPEAL UNDER COURT RULES? X Yes __ No.**

(1) If not agreeable, why not? **N/A.**

H. **NAME OF COUNSEL.**

ATTORNEYS FOR APPELLANT:

Thomas S. Evans, OBA #10642
EVANS LAW CENTER
P.O. Box 2646
Ponca City, OK 74602
(405) 762-2889

ATTORNEY FOR APPELLEE:

Jerry A. Richardson
ROSENSTEIN, FIST & RINGOLD
525 South Main, Suite 700
Tulsa, OK 74103
(918)

I. **DATE: December 18, 1995. Verified by:**

J. **AFFIDAVIT OF MAILING TO APPELLEE AND DISTRICT COURT CLERK ON DAY OF FILING IN SUPREME COURT.**

I hereby certify that a true and correct copy of the above and foregoing Petition in Error was mailed this

18th day of December, 1995 to Jerry A. Richardson of ROSENSTEIN, FIST & RINGOLD, 525 South Main, Suite 700, Tulsa, OK 74103 by depositing it in the U.S. Mails, postage prepaid.

I further certify that a true and correct copy of the above and foregoing Petition in Error was filed in the Office of the Court Clerk of Creek County, State of Oklahoma, on the 18th day of December, 1995.

/s/ Thomas S. Evans
Thomas S. Evans

EXHIBIT "A"

IN AND FOR THE DISTRICT COURT OF
CREEK COUNTY
STATE OF OKLAHOMA

CLARA REDDING, individually and as legal guardian of PATRICK LOUIS BELL, a minor, Plaintiff, vs. BOARD OF EDUCATION, SAPULPA SCHOOL DISTRICT, STATE OF OKLAHOMA, SAPULPA MIDDLE SCHOOL, TIMOTHY LYNN HOPPE, an individual, DR. CHARLES B. DODSON, SUZANNE WILLIAMS, DOES 1-25 Defendants.	Case No. CJ 94-569

JOURNAL ENTRY OF JUDGMENT

(Filed Dec. 13, 1995)

On October 23, 1995, this matter came on for decision on the defendants' motion to dismiss or alternative motion for summary judgment. This matter was previously argued to the court on September 25, 1995, at which time the plaintiff was represented by Thomas S. Evans of Evans Law Center and the defendants, the Sapulpa School District, Dr. Charles Dodson and Suzanne Williams (hereafter "the School District Defendants"), were represented by J. Douglas Mann of Rosenstein, Fist & Ringold. After hearing argument of counsel and reviewing the entire court file with regard to this matter, the court found as follows:

1. The School District Defendants' motion to dismiss or alternative motion for summary judgment should be treated as a motion for summary judgment.

2. The School District Defendants' motion for summary judgment should be sustained and this case should be dismissed as against the School District Defendants only for the plaintiff's failure to substantially comply with the notice requirements of 51 O.S. § 156.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the School District Defendants' motion for summary judgment is sustained.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is granted to the School District Defendants only against the plaintiff on all of the plaintiff's claims and that this case is hereby dismissed against the School District Defendants only.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the court finds that the plaintiff's claims against the School District Defendants have been fully adjudicated. The court directs the preparation and filing of this final judgment as to all of the plaintiff's claims against the School District Defendants only because the court has determined that there is no just reason for delay in the filing of a final judgment on the plaintiff's claims against the School District Defendants. This determination and directive are made pursuant to OKLA. STAT. tit. 12, § 994A (Supp. 1995).

DONALD D. THOMPSON
Judge of the District Court

APPROVED AS TO FORM:

/s/ Thomas S. Evans
Thomas S. Evans, OBA #10642
Evans Law Center
P.O. Box 2646
Ponca City, OK 74602

Attorney for Plaintiff

/s/ J. Douglas Mann
J. Douglas Mann, OBA #5663
Rosenstein, Fist & Ringold
525 South Main, Suite 700
Tulsa, Oklahoma 74103-4500

Attorneys for Defendants, the Sapulpa School District, Dr. Charles Dodson and Suzanne Williams

EXHIBIT "B"

This case arises out a [sic] sexual assault perpetrated by Timothy Lynn Hoppe, a teacher's aide employee, on Patrick Lewis [sic] Bell, a minor special education student. Defendant Hoppe has been convicted in criminal court of said sexual assault. Defendant Hoppe was an employee of the Sapulpa School District in general and specifically Sapulpa Middle School System, in Creek County, Oklahoma.

Clara Redding, is legal guardian of Patrick Lewis [sic] Bell. Plaintiff/Appellant Redding retained her first attorney of record, the law firm of Richardson, Stupes [sic] and Keating to pursue a civil action against Appellee Sapulpa School District, et al. in January of 1994. Claim was filed pursuant to O.S. 51 § 151, the Government [sic] Tort Claims Act. However, instead of Plaintiff's first attorney sending notice to the head of the particular subdivision, he sent a copy instead to Oklahoma State Attorney General's Office, pursuant to O.S. 51 § 151.

The Plaintiff/Appellant, Redding, terminated her services with the law firm of Richard [sic], Stoops and Keating, and retained Attorney Thomas S. Evans as her legal counsel. Mr. Evans continued with the case as though correct service had been delivered to the Sapulpa School District. Appellees in this matter argued that effective receipt of notice of a claim under the Government [sic] Tort Claims Act was not accomplished by the Plaintiff/Appellant. The Appellant claims that due to the large amount of correspondence and communications between the two (2) parties in this action, that the Appellees did have notice of a claim and proceeded in this case as

though good notice had been served. It was only after the statute of limitations had run under Title 51 § 151 of the Oklahoma Statutes, that Appellee Sapulpa School District, et al. claimed that service had not been issued to Appellee. Their actions clearly dictated that they were aware of a claim, and furthermore, that the Appellees had planned on defending a claim against the Sapulpa School District, et al. Actions taken by Appellees indicate they were aware of a claim. Appellee School District hired a lawyer before official notice was served and knew full well of a claim being pursued by the Appellants.

The Honorable Judge Donald D. Thompson ruled in favor of the Defendants/Appellees, Board of Education, Sapulpa School District, et al., on their Motion for Summary Judgment on October 23, 1995. The Appellants now wish to appeal such judgment for the reasons stated above.

EXHIBIT "C"

ISSUES AND ERRORS PROPOSED TO BE RAISED ON APPEAL

1. Whether compliance or substantial compliance of Notice of Claim was served on Defendant School District as per *Lucas vs. Independent Public School District No. 25*, 674 P.2d 1131.

2. Alternatively whether the statute of limitations set out in Oklahoma's Governmental Tort Claims Act apply to mentally retarded minors.